

COUNSEL IDENTIFICATION AT END

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

THE DELTA SMELT CASES

SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY et al. v. SALAZAR et al. (Case
No. 1:09-cv-407)

STATE WATER CONTRACTORS v.
SALAZAR et al. (Case No. 1:09-cv-422)

COALITION FOR A SUSTAINABLE DELTA
et al. v. UNITED STATES FISH AND
WILDLIFE SERVICE et al. (Case No. 1:09-cv-
480)

METROPOLITAN WATER DISTRICT v.
UNITED STATES FISH AND WILDLIFE
SERVICE et al. (Case No. 1:09-cv-631)

STEWART & JASPER ORCHARDS et al. v.
UNITED STATES FISH AND WILDLIFE
SERVICE et al. (Case No. 1:09-cv-892)

1:09-cv-00407-OWW-GSA
1:09-cv-00422-OWW-GSA
1:09-cv-00631-OWW-GSA
1:09-cv-00892-OWW-GSA
PARTIALLY CONSOLIDATED WITH:
1:09-cv-00480-OWW-GSA

**DECLARATION OF JOE DEL
BOSQUE IN SUPPORT OF MOTION
FOR INJUNCTIVE RELIEF**

Date: February 25, 2011
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Oliver W. Wanger

DECLARATION OF JOE DEL BOSQUE IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF

1 I, JOE DEL BOSQUE, declare as follows:

2 1. I am an adult over the age of eighteen. I have personal knowledge of all of the
3 facts contained in this declaration, except those stated on information and belief. As to those
4 statements based on information and belief, I believe them to be true. If called to testify, I would
5 and could completely and truthfully testify as to the statements contained herein.

6 2. I am a farmer on the west side of the San Joaquin Valley. I farm approximately
7 2,352 acres –1,977 acres in Fresno County, which is located primarily within the boundary of San
8 Luis Water District (“SLWD”); the remaining 375 acres are located in Merced County, within the
9 Pacheco Water District.

10 3. In prior declarations for the lawsuits regarding the 2008 Delta Smelt and 2009
11 Salmon biological opinions, I described how SLWD is the primary source of water supply for my
12 farm land, but that since 2007 the United States Bureau of Reclamation (“Reclamation”) has
13 dramatically reduced the allocation of water to SLWD, which in turn has dramatically reduced my
14 water supply.

15 4. In the 2007-2008 water year, I obtained approximately 3,073 acre-feet of water
16 from SLWD. In the 2008-2009 water year, the amount of water I obtained from SLWD dropped
17 to approximately 2,351 acre-feet, which is approximately 40% of my normal allocation. I
18 received approximately 675 acre-feet, or 10% of my normal allocation, during water year 2009-
19 2010. In the 2010-2011 water year, I received an initial allocation of 10% that increased to 45%
20 by mid-June 2010. However, the final allocation was received long after I had made planting
21 decisions on the expectation that we would receive an allocation of less than 45% of our
22 contracted amount.

23 5. My ability to farm follows my water supply’s trends. In 2007, I was farming on
24 approximately 2,300 acres, 850 acres of which I lease under long-term agreements. In 2010,
25 however, because of water supply constraints, I had to decrease the acreage I farm by around 40%
26 to approximately 1,500 acres. I had to find and rent additional land in other districts with water,
27 while I idled land that I currently rent in the SLWD service area.

1 6. Water supply uncertainties and constraints continue to affect my planting
2 decisions. Historically, I was able to grow a variety of crops including row crops. Now, however,
3 concerns about water supplies and water costs force me to focus on farming higher-value
4 permanent crops instead of row crops. Therefore, I currently farm around 660 acres of almonds,
5 which have a remaining life of nearly two decades, and 116 acres of asparagus, which have a
6 remaining life of around 8-10 years. I cannot cut back on the water the permanent crops require
7 without destroying them. If our final allocation for the 2011-2012 water year is inadequate, we
8 will need to cut back on our row crops and focus on saving my permanent crops.

9 7. I will plant wheat this winter, even though it is not my preferred crop and generates
10 less than 1/3 the value as my other crops, because I received water late in 2010 that has to be used
11 by around March of 2011. I would prefer to use that late-delivered water for our preferred,
12 traditional crops, like cantaloupes, asparagus, and almonds, but the pressure to “use it or lose it” is
13 forcing us to plant and irrigate crops we would otherwise choose not to farm. In years past, I have
14 been able to project our planting capabilities by December or January based on precipitation
15 alone. That is not the case now, and I am not hopeful that I will receive a final allocation until late
16 in the upcoming water year, such as in mid-March or later.

17 8. I have learned that the U.S. Bureau of Reclamation recently forecasted initial water
18 allocations of 45% based on a 90% exceedance forecast, and 50% based on a 50% exceedance
19 forecast. Based on my lifelong experience as a Fresno County farmer, I believe the precipitation
20 we experienced in the last several months could and should have resulted in a significantly higher
21 initial water allocation than 45%, perhaps a 60% initial allocation. If we had received a 60%
22 initial allocation several months ago, we could have taken steps to plant another 200 acres of
23 melons in the upcoming 2011-2012 water year. Each acre of melons requires \$1,500-\$2,000 in
24 labor costs, meaning an additional 200 acres of melons would have translated into \$300,000 to
25 \$400,000 in wages and benefits for the workers I would need to rehire or retain to work that
26 additional land.

27 9. The cost of supplemental water has increased steeply in the past three years and I
28 have been forced to supplement water at a drastically increased cost. Since 2007, my cost of

1 obtaining supplemental water has soared by three times.

2 10. There are no wells to service my farm. Test holes have proven to be unsuccessful
3 and we do not have the ability to drill additional wells. It is simply economically unfeasible to
4 continue testing for wells with no reasonable prospect of success in doing so.

5 11. I am hopeful that I will be able to "carry over" some water from the 2010-2011
6 water year into the 2011-2012 water year. However, the amount of water I project I might be able
7 to carry over is significantly less than what I was able to carry over in prior years. For example, in
8 the 2007-2008 water year, I was able to carry over approximately 2,000 acre-feet of water. For
9 the upcoming water year, however, I project I will only be able to carry over approximately 900
10 acre-feet of water. Unfortunately, I will not know until around March 2011 whether Reclamation
11 will permit me to carry over this water into the 2011-2012 year. That uncertainty means most of
12 the 900 acre-feet of water I have available to carry over will likely be used to support the wheat
13 crop, not my traditional crops.

14 12. The decreased water supply and increased water costs have substantially reduced
15 revenues from those crops still in production. Furthermore, even when I fallow land, I am still
16 required to pay rents on the leased land, as well as assessments and other costs associated with the
17 upkeep and maintenance of the dormant land. This has caused significant hardship for my
18 operation as revenues have been dramatically cut because of steeply rising costs, which are largely
19 a result of purchasing supplemental water to make up for Reclamation's inability to deliver
20 contracted water to SLWD.

21 13. The water supply uncertainties continue to interfere with our employment
22 capabilities. In 2009, we had to reduce our employees' hours by approximately one-third across
23 the board. In 2010, we were able to hire back some seasonal employees that we could not hire in
24 2009, but we have not been able to fully restore our permanent workers' hours. The salary
25 reductions continue to impact our employees and their families. Our ability to maintain our
26 current employees or offer full-time positions in the future is related to our ability to secure water
27 supplies.

28 14. The decreased water supply also threatens to undermine nearly two decades of my

1 efforts to create a niche market to sell high quality cantaloupes to specialty buyers. This unique
2 niche is a critical source of revenue for my operation but is in jeopardy of being lost because of
3 water supply constraints. In 2009 and 2010, I tried to have other growers in other areas with
4 better water availability try to grow my cantaloupes, but I found that the crop quality was inferior
5 to, and less reliable than, what I have been able to produce on my land. I attributed the inferiority
6 to different growing conditions (e.g., soil, temperature, etc.). The inferior products negatively
7 impacted my position in the niche market I have built up, and I am struggling to recover from
8 those losses.

9 15. Water supply constraints have affected my relationships with my lending
10 institutions, and I expect that to continue in the future. More specifically, I found that banks were
11 more stringent in 2010 than in prior years. It also took longer to finalize agricultural loans.
12 Furthermore, loan repayment time tables were much more stringent than in years past. For
13 example, in past years, we used ongoing revenue to finance payroll and operations, and then
14 repaid our loan at the end of the year. In 2010, however, we were required to use revenue to pay
15 down the loan immediately. That interfered with our cash flow, strained our liquidity, and
16 increased worries about meeting payroll obligations.

17 16. I understand that numerous factors and regulatory restrictions control how much
18 water SLWD is able to provide my farm. I am concerned that the 2008 Delta Smelt and 2009
19 Salmon biological opinions will further impact how much water SLWD will be able to deliver to
20 my farm. That concern is based on the fact that, based on my lifelong experience as a Fresno
21 County farmer, I believe the precipitation we experienced in the last several months could and
22 should have resulted in a significantly higher initial water allocation than the 45% allocation we
23 received, and that the 45% allocation is due to regulatory constraints on water supply because of
24 the 2008 Delta Smelt and 2009 Salmon biological opinions, not hydrology. Any new restrictions
25 on water deliveries will both reduce the water available to me in the short term, and reduce the
26 likelihood of my farm ever receiving its full allotment in the long-term.

27 17. If SLWD were to see a reverse in its declining water allocations, the anticipated
28 damage to my crops would be mitigated in proportion to the amount of water that I receive. As I

1 stated above, I expect I would also be able to retain more of my employees at the farm with more
2 hours, and possibly rehire even more of those employees I have had to let go.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct. Executed this 27 day of January, 2011, at Los Baños,
5 California.

6 
JOE DEL BOSQUE

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